

Brad Livingston - 10/1/2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA)
McCOLLUM, individually, and)
STEPHANIE KINGREY,)
individually and independent)
administrator of the Estate)
of LARRY GENE McCOLLUM)
PLAINTIFFS)

VS.)

CIVIL ACTION NO.
4:14-cv-3253
JURY DEMAND

BRAD LIVINGSTON, JEFF)
PRINGLE, RICHARD CLARK,)
KAREN TATE, SANDREA SANDERS,)
ROBERT FASON, the UNIVERSITY)
OF TEXAS MEDICAL BRANCH and)
the TEXAS DEPARTMENT OF)
CRIMINAL JUSTICE)
DEFENDANTS)

ORAL AND VIDEOTAPED DEPOSITION OF

BRAD LIVINGSTON

October 1, 2015

Volume 1

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

Plaintiffs' MSJ Appx. 6637

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1 ORAL AND VIDEOTAPED DEPOSITION OF BRAD LIVINGSTON,
2 produced as a witness at the instance of the Plaintiffs, and
3 duly sworn, was taken in the above-styled and numbered cause on
4 the 1st day of October, 2015, from 11:31 a.m. to 5:39 p.m.,
5 before Abigail Guerra, CSR, in and for the State of Texas,
6 reported by machine shorthand, before Honorable Keith Ellison,
7 at the United States District Courthouse, 515 Rusk, Houston,
8 Texas, pursuant to the Federal Rules of Civil Procedure and the
9 provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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Ms. Jennifer Osteen
Ms. Kamilla L. Stokes
Ms. Ashley Palermo
Ms. Carolanda Bremond, JD
Judge Keith P. Ellison
Rebecca Vogel
Stephanie Loewe

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1 THE COURT: I'm Keith Ellison. Thank you all
2 for your presence.

3 You've been through the appearance of counsel, I
4 assume, Court Reporter?

5 MR. EDWARDS: No, Your Honor.

6 THE COURT: You've gotten everything you need?

7 THE REPORTER: No, we haven't been through it.

8 THE COURT: Oh, we haven't gone through it.
9 Let's do it then. Starting with plaintiffs.

10 MR. EDWARDS: Jeff Edwards for the plaintiffs.

11 MR. MEDLOCK: Scott Medlock.

12 MR. SINGLEY: Mike Singley.

13 MR. JAMES: David James for the plaintiffs.

14 THE COURT: Welcome to all of you.

15 Okay, for defendants.

16 MS. BURTON: Good morning. Cynthia Burton.

17 MR. GREER: Matt Greer.

18 MS. BURTON: And this is Sharon Howell. She's
19 Texas Department of Criminal Justice general counsel and our
20 agency representative today.

21 THE COURT: Thank you for being here.

22 MS. BURTON: This is Mr. Livingston, the
23 witness.

24 THE COURT: Thank you, all.

25 MS. HANEY: Your Honor, for UTMB, Lee Haney.

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1 I think it's -- it's accurate to state that I'm
2 aware that as an agency we have an responsibility to have
3 policies and procedures in place, which we do. We've continued
4 to expand those policies and procedures. I have an overall
5 approach to leadership and management that we should always
6 seek to improve our effectiveness. But as it relates to your
7 question, yes, I'm aware that we have an obligation to have
8 policies and procedures and practices in place to mitigate the
9 impact of heat.

10 Q. (BY MR. EDWARDS) And that's because heat can be
11 dangerous for your inmate population, right?

12 A. Absent the provision of adequate policies and
13 procedures and practices, I think it's also important to have a
14 specific example with -- because not all individuals would
15 react the same -- same way.

16 Q. Sure.

17 But you'd agree with me that, at least from 2004
18 onward, you un- -- you've understood, you, personally, Brad
19 Livingston, have understood that it's important for TDCJ to
20 have policies and practice that mitigate the dangers of extreme
21 heat inside the Texas prison system. Fair?

22 A. I think it's important for us to have policies and
23 procedures and practices in place to mitigate the impact heat.

24 Q. Because the impact of heat on the prisoner population
25 can be very dangerous, correct?

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1 A. Again, in the absence of practices and procedures
2 intended to mitigate and in the absence of a whole host of
3 support parameters and support functions that we have, it can
4 be, yes.

5 Q. Sure.

6 Look, you know, the heat in Texas during the
7 summer is a known danger, and you expect it to be known to all
8 of administrators, correct?

9 A. We have extensive policies that outline the steps
10 first to outline and first to recognize -- recognize and
11 prevent and ultimately also treat the impacts of heat stress.

12 Q. Do you have what you contend to be policies and
13 practices that mitigate the dangers of heat because you
14 understand that without them the heat can pose a danger to your
15 inmate population?

16 MR. ALVAREZ: This line of questioning has been
17 asked and answered multiple ways and multiple times.

18 MR. EDWARDS: I don't know that it's been
19 answered.

20 THE COURT: I'm going to give some room. I'll
21 allow it.

22 MR. EDWARDS: Would you mind repeating my
23 question to Mr. Livingston so he recalls it, ma'am?

24 (Requested portion read back).

25 A. Yes.

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1 neither has a facilities division director. I would rely
2 certain on their judgment and expertise to -- to put forward a
3 recommendation such as that.

4 I think also to the extent that -- to the extent
5 that a consideration was ever made on the part of the dialogue
6 and discussion and consideration would have to include what
7 funding or what expenditures you would have to forego to move
8 -- to move down that path, which also, again, as I said a few
9 minutes ago, we don't have extra money laying around; and we
10 typically are required and have reduced medical shortfalls in
11 -- in our agency's budget as a matter -- as a matter of course.
12 So I think there would be a lot of things that would have to be
13 considered, but none of my staff have recommended that we do
14 so.

15 Certainly, if that occurred, we would look at --
16 we would look at every aspect of the -- of the request. We
17 would also factor in the overall history of our mitigation
18 efforts and the steps we have taken in the last few years to
19 enhance those mitigation efforts and make a judgment.

20 Q. I'm going to ask the question that I asked you one
21 more time, but I appreciate the -- the response nevertheless.

22 Have you ever considered adding air-conditioning
23 or retrofitting any aspect of any nonair-conditioned housing
24 area ever? You, Mr. Livingston?

25 A. No.

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1 Q. Have you ever asked her whether or not we should
2 air-condition specific parts of the housing areas?

3 A. I've not -- I've not specifically asked her that
4 question.

5 Q. Is there anything that you would have prevented you
6 from specifically asking that question that we need to be aware
7 of?

8 A. No.

9 Q. Did you ever specifically ask -- and I -- Mr. Thaler,
10 what is his first name?

11 A. Rick.

12 Q. Did you ever specifically ask Rick -- Rick Thaler,
13 just so the court knows, he was the former head of the
14 Institution's Division?

15 A. Correctional Institutions division, correct.

16 Q. Thank you, sir.

17 Did you ever specifically ask Mr. Thaler if we
18 should air-condition portions of the housing area?

19 A. No. But as I pointed with just as with
20 Dr. Linthicum, I had ongoing discussions about a range of
21 operations with Rick Thaler to include our mitigation efforts
22 with respect to heat.

23 Q. What about Mr. Immon? Did you ever specifically ask
24 him if we should consider air-conditioning any aspect of the
25 housing area --

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1 A. No.

2 Q. -- area housing areas?

3 Did anything prevent you from specifically
4 asking that question of Mr. Thaler or Mr. Immon?

5 A. No.

6 Q. When did Mr. Stephens take over for Mr. Thaler?

7 A. I may not get the exact date right, but --

8 Q. Ballpark, sir.

9 A. -- but I believe it was -- I believe it was the early
10 summer of 2013, if I'm not mistaken.

11 THE COURT: What is Mr. Thaler doing now, if you
12 know?

13 THE WITNESS: I believe Mr. Thaler he's retired
14 from TDCJ. I believe he works for Sam Houston State
15 University. I'm not for sure in what capacity.

16 THE COURT: Thank you.

17 Q. (BY MR. EDWARDS) You ever specifically asked
18 Mr. Steven if we should -- if the agency should consider
19 air-conditioning portions of the housing areas?

20 A. No, but I have asked Mr. Stephens specifically if he
21 believes the mitigation efforts and all of the steps that we
22 take to mitigate the efforts of heat are appropriate and
23 effective.

24 Q. And does he say, yes, they are?

25 A. Yes, sir.

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1 prison facilities in Texas, if any of them are air-conditioned?

2 A. I do not know.

3 Q. In the last -- you're coming up around 11 years?

4 A. Yes, sir.

5 Q. In the last 11 years, is there anything that we need
6 to be aware of that would have prevented you from inquiring as
7 to whether or not there were certain federal facilities that
8 had air-conditioning housing areas? Anything prevented you
9 from finding that?

10 A. No.

11 Q. Anything prevent you from asking legislatures why
12 they may have made some distinction between TDCJ facilities and
13 county jail facilities?

14 A. No.

15 Q. Sir, I think I know the answer to this, but have
16 you -- has TDCJ ever sought an outside independent study of
17 whether or not it should reduce the temperatures inside its
18 housing areas?

19 A. Let me make sure I understand the question. Have we
20 ever sought a study, an outside independent study?

21 Q. Do you know what an outside independent study is?

22 THE COURT: Are you asking whether he sought
23 one, or whether he knows if one exists?

24 MR. EDWARDS: Okay.

25 Q. (BY MR. EDWARDS) Well, do you know if there's ever

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1 been an independent non-TDCJ study done about the need to
2 reduce temperatures in the Texas prison system housing areas?

3 A. Not that I'm aware of.

4 Q. Okay. As the head of agency for the past 11 years,
5 did you ever authorize such a study?

6 A. No.

7 Q. Should you have?

8 A. I don't believe so on the basis of policies and
9 procedures and in mitigation efforts that we have in our agency
10 and the steps that we've taken.

11 Q. Let me go through -- did you ever have any specific
12 conversations with Mr. Thaler as to whether or not he thought
13 an independent study would be beneficial?

14 A. I don't recall specifically discussing that with him.

15 Q. Did you ever have any conversations with
16 Dr. Linthicum as to whether or not she thought an independent
17 study on temperatures would have been beneficial?

18 A. I don't recall having that discussion.

19 Q. Did you ever have any conversations with Mr. Immon,
20 the director of facility, whether or not an independent study
21 would have been beneficial?

22 A. I don't recall having that discussion.

23 Q. Did you ever have any conversations with Mr. Stephens
24 as to whether or not an independent study would have been
25 beneficial?

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1 A. There is a recent engineering study for four of our
2 facilities that we undertook. I can't recall the exact same --
3 the exact time frame, but I believe the reports have been
4 recently released.

5 Q. Those are the reports that your expert witnesses
6 filed that you paid for after being sued, correct?

7 A. I can't recall the exact time.

8 Q. Well, I'll represent to you that that TRAC
9 Engineering was designated as an expert in litigation, and that
10 they were not retained by you until after the litigation. Is
11 that different in any respect from your understanding, sir?

12 A. Again, I don't recall the exact timing.

13 Q. Do you think that retained experts testifying in a
14 court case is an independent study?

15 THE COURT: He's just asking whether you think
16 that's a sufficient degree of independence if party requesting
17 the study is paying for it.

18 THE WITNESS: Your Honor, if that's the
19 characterization of the question, I'd certainly believe that a
20 study can be independent and valid even if we pay for it.

21 THE COURT: Okay. That's all he was asking.

22 Q. (BY MR. EDWARDS) All right. Before you were sued
23 relating -- regarding being responsible for causing the deaths
24 of many, many, people due to indoor temperatures, did you ever
25 request a study about the cost of reducing the temperatures in

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1 the Texas prison system?

2 MS. BURTON: Objection to the argumentative
3 nature of that question, Your Honor.

4 MR. EDWARDS: This is a deliberative
5 indifference case. I'd ask for some --

6 THE COURT: I'll allow it.

7 MR. EDWARDS: Abby, would you --

8 A. No, sir.

9 Q. (BY MR. EDWARDS) Have you been informed that 20
10 people have died with a diagnosis of hypothermia while housing
11 in Texas Department of Criminal Justice facilities since 1998?

12 A. I don't recall the exact number being 20, but
13 certainly in 2011, I'm aware of ten. I'm aware of two in 2012,
14 and I believe two in 2007, if I'm not mistaken; and I know
15 there may have been in the early years prior to that, I don't
16 recall the exact number.

17 Q. Okay. I'll represent to you that there was
18 heatstrokes -- let me -- is that all the heatstroke deaths that
19 you think there could in the Texas prison system during that
20 time frame?

21 A. Could you repeat the question?

22 Q. Do you know that hypothermia is a notoriously
23 underreported cause of death?

24 A. I don't know that.

25 Q. Have you ever asked Dr. Linthicum if that's, in fact,

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1 their responsibility and expectation of the agency and the unit
2 management is to engage in that from start to finish with --
3 within the summer.

4 Q. Are the mitigation measures the same at 80 degrees as
5 they are 106 degrees?

6 A. With respect to the -- again, with respect to the
7 access to water, the access to showers, the access to all of
8 those things we've identified, the expectation is that that
9 staff provide those wellness checks and other -- other
10 mitigation efforts throughout the course of the summer.

11 Q. Well, I hear that, but are you telling me the
12 mitigation efforts you have in effect during the course of the
13 summer to deal with this known danger of the extreme heat that
14 they're the same whether the temperature is --

15 A. I'm not --

16 Q. -- please, sir -- 82 degrees, 88 degrees, or
17 105 degrees?

18 A. What I'm saying is that the baseline steps that we
19 take are in place for the entirety of the summer. As -- as the
20 conditions necessitate, our staff are obviously -- for example,
21 we don't transport offenders in the heat of the day. We -- the
22 objective with respect to transporting our offenders is to move
23 them earlier in day before it gets hot. We've also placed fans
24 in addition to water in our buses. So there are clearly some
25 steps that we take that we try to take early in the day before

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1 it gets hot.

2 Q. And you do those steps in June, July, August, and
3 September, right?

4 A. Correct.

5 Q. Whether it's 82 degrees or 107 degrees, you still do
6 those steps, right?

7 A. Yeah. Correct.

8 Q. Right.

9 A. There may well be some -- obviously, if an offender
10 is showing symptoms, we have a process for staff to identify
11 that and -- and to seek medical attention.

12 Q. Okay. But the precautions that you're talking about,
13 okay, temperatures of shower, ventilation flow, fans, ice
14 water, you even talked about wellness checks, those are done
15 and performed at least according to the policy every day in the
16 summer, right?

17 A. Correct.

18 Q. Do you --

19 A. Continuously.

20 Q. Do you -- and I mean TDCJ -- do anything differently
21 if it's 107 degrees than you do at 84 on a random July day,
22 policy-wise?

23 A. I would refer back to our detailed -- for example,
24 our detailed heat message to -- to recall if we have specific
25 instructions. I do know that our staff are instructed to be

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1 measures -- whatever measures are necessary to make sure that
2 offenders and staff alike are -- the effects of the heat are
3 mitigated.

4 Q. Let me try the help you.

5 Are you aware that when the temperature is above
6 95 degrees your department has a policy which prohibits certain
7 people from working or limits the amount of activity they do
8 during work at greater than 95 degrees. Are you aware of that?

9 A. That it would certainly depend if an offender has
10 work-related restrictions.

11 THE COURT: He's asking if you know of such a
12 policy.

13 Q. Do you know if such a policy exists that curtails
14 work activities after 95 for a certain segment of population?

15 A. Certainly, I would have to see the policy to refresh
16 my memory on details, but I do know that we do have policies as
17 you've described.

18 Q. Okay. Do you know if there's a similar policy once
19 the indoor temperatures go above 95 degrees with any aspect of
20 your population?

21 A. Again, the indoor population or the indoor policies
22 are not temperature dependent, in that we are providing cooling
23 showers and more ice water and fans and ventilation,
24 irrespective of the given temperature. The temperature outside
25 is tied specifically to offenders. The temperature logs

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1 outside and the restrictions on whether they are working is
2 tied specifically to their work restriction, given their
3 medical condition.

4 Q. I believe you've answered interrogatory -- do you
5 know an interrogatory is? It's a fancy word for question. Are
6 you aware?

7 A. I'm aware that occurs extensively in lawsuits.

8 Q. I believe in interrogatory or request for admission
9 you said it's you're understanding that many of the housing --
10 many of the facilities, the indoor and outdoor temperature are
11 relatively similar, give or take, a couple of degrees. Is that
12 your understanding as you testify here today?

13 A. I would --

14 MS. BURTON: Objection. Objection. Your Honor,
15 that's improper impeachment.

16 MR. EDWARDS: It's not impeachment.

17 THE COURT: Just a second. Just a second. Let
18 me get the objection.

19 MS. BURTON: It lacks foundation, and it's
20 improper attempt at impeachment. If he plans to show him the
21 interrogatory --

22 THE COURT: He just -- he's asked whether he's
23 aware that happened, and maybe the witness is unaware, maybe it
24 didn't happen, but the witness can say that.

25 A. I'm not aware of the specific interrogatory either

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1 Q. Do you recall during the summer of 2011 there being a
2 prolonged heat wave?

3 A. As I pointed out in the previous answer, it was a
4 record-heat event, a record-heat summer with -- with a
5 prolonged high temperatures. So both the duration and
6 intensity of the heat was greater than had been the case in
7 prior summers or subsequent summers.

8 And, again, as I understand it, that was not
9 predicted to be an unusually different summer that what had
10 typically been the case. And as I pointed out, our mitigation
11 efforts had for the most part worked over the years. We relied
12 on those, and we had no reason to believe that they wouldn't
13 work in -- in the summer of 2011.

14 Q. So let me just make sure I understand what you're
15 saying. You're saying, look, it was a really, really hot
16 summer. It was record-breaking summer. It could not have been
17 anticipated and was not predicted that such a summer like this
18 was coming or could come; and we did the best we could; and we
19 had no indication based on our prior mitigation measures that
20 the inmates were at risk even given these record-setting
21 temperatures; is that correct?

22 A. I'm not sure I would frame it exactly as you have.
23 Clearly, our objective is to mitigate that risk and to reduce
24 the risk and take every step and measure we can to mitigate the
25 impacts of the heat and to pay very close attention to those

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1 Q. I'm asking about these two.

2 A. This page delineates what occurred in the summer of
3 2011 and 2012. This is more comprehensive. It includes this
4 and everything subsequent to that.

5 Q. What happened this?

6 A. All three page to me, I view it as sort of one
7 document.

8 Q. Who made these two pages who wrote these?

9 A. Again -- again operational staff worked on these
10 three pages.

11 MR. EDWARDS: Your Honor, can we -- any way for
12 us to get a copy of this.

13 THE COURT: Sure.

14 MR. EDWARDS: Can we go off the record for a
15 minute?

16 MS. BURTON: I've got copies.

17 THE COURT: You want this back, or you want me
18 to have it.

19 MR. GREER: And for the record, this was
20 disclosed in response to the subpoena that was served on the
21 plaintiffs this week.

22 Q. (BY MR. EDWARDS) All right, so the first page of
23 Exhibit 3 -- the 1, 2, 3, 4, 5, 6, 7 -- the top seven bullet
24 points, your understanding that they were implemented sometime
25 in 2011?

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1 generally brought to your attention by Mr. Thaler?

2 A. No.

3 Q. Do you know that employee related -- heat-related
4 injuries to employees go up beginning in the months --
5 beginning in June, July, and August?

6 A. We have -- we have reports that are generated that I
7 know are unit-based staff utilized regularly. I'm on a
8 distribution list. I don't -- it's not -- It's not a report
9 that I read regularly, but I am familiar with the reports, and
10 it would be consistent with the trends I've seen over time
11 for -- for that to occur.

12 Q. And just so everybody's clear, you are on the email
13 distribution list, which discusses the numbers of
14 employee-related-heat-related illnesses and offender-related
15 heat illness, right?

16 A. It's --it's, I believe, a monthly report. It just
17 simply shows a chart and indicates the numbers.

18 Q. And I've looked at several of the charts, and it
19 looks like there are very few weather-related injuries until
20 you get to May, June, July, and August and September and then
21 the numbers go up appreciably; and that would have been
22 consistent with your understanding as well, correct?

23 A. Yes.

24 Q. And you may not read them religiously or pore over
25 them, but you'd familiar with them when they're provided to

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Plaintiffs' MSJ Appx. 6658

Brad Livingston - 10/1/2015

1 certain point, fans are actually counterproductive in terms of
2 mitigating the effects of heat?

3 A. I can't -- I'm not knowledgeable enough in -- in this
4 particular field to know whether what you're saying is accurate
5 or not.

6 Q. After this many people have died of heatstroke inside
7 the prison system, don't you think that you should be?

8 A. Don't you think that I should be what?

9 Q. Don't you think that you should be knowledgeable
10 about the effect of fans on mitigation of heat, given that
11 they're in your policy, sir?

12 A. Let me back up. In this case, when you're saying
13 "don't you think you" as the collective agency, I believe as an
14 agency we are. If you're, in this case, referring to you, as
15 Brad Livingston, I'm -- I'm not sure I would agree with that
16 assertion.

17 Q. Okay. I am asking you, Brad Livingston, as the
18 person who has the ability to, on your own take out or add to
19 any one of these precautions, right? You have that ability,
20 sir, correct?

21 A. As the executive director, I can strike or add an
22 item to this email.

23 Q. Have you ever had a conversation with anybody at
24 Health Services or anybody with an expertise of engineering or
25 fans as to the effect of fans when the temperature goes above

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1 95 degrees?

2 A. I have not posed specific question as you've
3 articulated it. I've had ongoing discussions with all those
4 experts within the agency as to what they believe the best
5 course of action is for operating our system during the summer
6 months, and they pull together in -- in -- frankly, they meet
7 year round.

8 The key players in this agency have multiple
9 occasions to meet on a variety of topics, but they meet very
10 specifically on this topic in the spring.

11 And it's my judgment, as the executive director,
12 not to second guess their more specific and targeted skill sets
13 and expertise on these areas than mine. That's why I've hired
14 them. That's why I put them this place. That's why I rely on
15 them. And to me it would be shortsighted and potentially
16 problematic to, without more specific expertise myself, go in
17 and strike out items or add items.

18 I rely on their judgment. And I would say,
19 again, come back to is that the protocols this agency has had
20 in place for many, many years, although we have built upon
21 them, have worked systematically before 2011. We had every
22 reason to expect that they would work during 2011 and could not
23 have anticipated and did not anticipate a heat event with
24 record temperatures, both in terms of duration and intensity
25 during the 2011.

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Plaintiffs' MSJ Appx. 6660

Brad Livingston - 10/1/2015

1 Q. Sure.

2 You know your employees are injured due to
3 heat-related illnesses during the summer, right?

4 A. I know we track any and all workers' compensation
5 claims to include illness or injuries related to heat, and that
6 there would be -- there would be a number.

7 Q. And we spoke about the uptake during the summer. Did
8 you -- have you ever reached out to any of the individual
9 employees injured by the heat or hot weather to find out what
10 their perspective was?

11 A. No, I haven't.

12 Q. Did you ever instruct Mr. Thaler or Mr. Stephens,
13 hey, I noticed there were 30 heat-related injuries in July.
14 Why don't we talk to these people to find out what's going on
15 with them?

16 A. I'm not aware of 30 heat-related-employees injuries
17 in July.

18 Q. How ever many they were, sir.

19 A. Well, I didn't think --

20 Q. Let's go talk to them and find out what's going on?

21 A. I think the number is relevant because my
22 understanding of the number is relative to 38,000 employees, 32
23 of whom work on our units. It's a very, very small number. So
24 from that standpoint, I understand you were using a
25 hypothetical example, but I think it's -- it's relevant.

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Brad Livingston - 10/1/2015

1 I, ABIGAIL L. GUERRA, Certified Shorthand Reporter,
2 in and for the State of Texas, hereby certify to the following:

3 That the witness, BRAD LIVINGSTON, was duly sworn by
4 the officer and that the transcript of the oral deposition is a
5 true record of the testimony given by the witness;

6 I further certify that pursuant to Federal Rules of
7 Civil Procedure (30)(e)(1)(A) and (B) as well as Rule
8 (30)(e)(2) that the signature of the deponent:

9 I further certify that pursuant to FRCP Rule
10 30(f)(1) that the signature of the deponent:

11
12 X was requested by the deponent or a party before
13 the completion of the deposition and that signature is to be
14 before any notary public and returned within 30 days from date
15 of receipt of the transcript.

16 If returned, the attached Changes and Signature Page
17 contains any changes and the reasons therefore:

18
19 was not requested by the deponent or a party
20 before the completion of the deposition.

21
22 That \$ is the deposition
23 officer's charges for preparing the original deposition
24 transcript and any copies of exhibits, charged to STEPHEN
25 McCOLLUM and SANDRA McCOLLUM, individually, and STEPHANIE

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1 KINGREY, individually and independent administrator of the
2 Estate of LARRY GENE McCOLLUM, individually and on behalf of
3 those similarly situated;

4
5 That pursuant to information given to the deposition
6 officer at the time said testimony was taken, the following
7 includes all parties of record:

8 FOR THE PLAINTIFFS:

9 STEPHEN McCOLLUM and SANDRA McCOLLUM, individually, and
10 STEPHANIE KINGREY, individually and independent administrator
of the Estate of LARRY GENE McCOLLUM

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14 - and -

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19

20 I further certify that I am neither attorney, nor
21 counsel for, nor related to, nor employed by any of the parties
22 or attorneys to the action in which this deposition was taken;

23 Further, I am not a relative, nor an employee of any
24 attorney of record in this cause, nor am I financially or
25 otherwise interested in the outcome of the action.

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1 Certified to by me this 16th day of October, 2015.

2
3
4 

5
6 ABIGAIL GUERRA, Texas CSR 9059

7 Expiration Date: 12/31/15

8 WRIGHT WATSON & ASSOCIATES

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Brad Livingston - 10/2/2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA
McCOLLUM, individually, and
STEPHANIE KINGREY,
individually and independent
administrator of the Estate
of LARRY GENE McCOLLUM

VS.

BRAD LIVINGSTON, JEFF
PRINGLE, RICHARD CLARK,
KAREN TATE, SANDREA SANDERS,
ROBERT FASON, the UNIVERSITY
OF TEXAS MEDICAL BRANCH and
the TEXAS DEPARTMENT OF
CRIMINAL JUSTICE

CIVIL ACTION NO.
4:14-cv-3253
JURY DEMAND

ORAL AND VIDEOTAPED DEPOSITION OF

BRAD LIVINGSTON

October 2, 2015

Volume 2

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Plaintiffs' MSJ Appx. 6667

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1 ORAL AND VIDEOTAPED DEPOSITION OF BRAD LIVINGSTON,
2 produced as a witness at the instance of the Plaintiff, and
3 duly sworn, was taken in the above-styled and numbered cause on
4 the 2nd day of October, 2015, from 9:01 a.m. to 4:37 p.m.,
5 before Abigail Guerra, CSR, in and for the State of Texas,
6 reported by machine shorthand, before Honorable Keith Ellison,
7 at the United States District Courthouse, 515 Rusk, Houston,
8 Texas, pursuant to the Federal Rules of Civil Procedure and the
9 provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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STEPHANIE KINGREY, individually and independent administrator
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ALSO PRESENT:

Mr. Kevin Schaefer
Ms. Ashley Palermo
Ms. Kamilla L. Stokes
Judge Keith P. Ellison

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7	"Comorbidities That May Affect Heat Tolerance Bates No. TDCJ030458	9
8	Correctional Managed Health Care Policy Manual Effective Date: 10/30/2013 Bates Nos. TDCJ05530 to 537	9
9	Document Dated June 26, 2009 Bates Nos. TDCJ013583 to 84	52
10	Guidelines for Completing the Health Summary for Classification Form Bates Nos. TDCJ019152 to 55	71
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12	"Deadly Heat in Texas Prison"	112
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14	Letter Dated August 12, 2011 Bates No. 000008	165
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1 BRAD LIVINGSTON,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. EDWARDS:

5 Q. Thank you for being patient, Mr. Livingston.

6 THE COURT: You ready to proceed?

7 MR. EDWARDS: Thank you, Your Honor. I'm trying
8 to gather some thoughts.

9 THE COURT: Okay.

10 Q. (BY MR. EDWARDS) Sir, TDCJ operates in accordance
11 with heat stress policies, is that your understanding? Or --
12 strike that.

13 Does TDCJ operate in accordance with heat stress
14 policies?

15 A. We have a number of policies regarding heat stress,
16 both in terms of agency operating procedures and correctional
17 managed healthcare policies. In addition to that, we utilize
18 the heat message in practice on our units.

19 Q. Okay. All right. In those policies, do you identify
20 numerous risk factors that render inmates or prisoners
21 particularly vulnerable to heat stress. I think it does, but
22 is that a "yes"?

23 A. If I could take a look at the policy you're
24 referencing, I would appreciate it.

25 Q. Sure. Before you do, though, are you aware if a

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1 A. It would certainly depend on the specific
2 circumstances in the individual case, but it would be possible.

3 Q. Okay. Well, you know it's possible because you know
4 that you know that 20 people have died in your system -- at
5 least 20 people, since 1998, correct? From heatstroke?

6 MS. BURTON: Objection. Assumes facts not in
7 evidence.

8 THE COURT: I'll allow it.

9 A. What -- in terms of your preparatory questions, I
10 think you referenced cardiovascular disease. Certainly, that's
11 one vulnerability. I'm not specifically knowledgeable about
12 all of those cases to know if they had -- they all had
13 cardiovascular disease as one of their conditions.

14 Q. (BY MR. EDWARDS) Okay. Just so we're clear, you do
15 know, don't you, that 20 people have died of heatstroke,
16 confirmed heatstroke hypothermia, while housing in the Texas
17 prison system since 1998; is that correct?

18 A. I'm specifically aware of the list of 10 offenders
19 who died in 2011, 2 who died in 2008, I believe; and 2 in 2012.

20 Q. Are you aware of the people that have died before
21 that?

22 A. I am aware of -- I've been made aware of their deaths
23 by virtue looking at a list. I don't recall the exact numbers
24 on that list for the exact instances.

25 Q. How were you made aware of Ricky Robertson heatstroke

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1 death in July of 2004 at the Darrington Unit?

2 A. Only by virtue of preparing for this deposition and
3 seeing -- I believe, seeing that listed -- seeing that death
4 listed on a list.

5 Q. Just so I'm clear, prior to a week ago, you -- you
6 were never told about or were made aware about the death of
7 Ricky Robertson by hypothermia at the Darrington Unit?

8 A. It would have been prior to more than a week ago, but
9 what year are you referencing his death?

10 Q. 2004, sir.

11 A. I don't have a recollection of -- of being aware of
12 that specific death prior to the last few weeks.

13 Q. Well, when you were told about the pattern of heat
14 deaths sometime in July or early August of 2011, did you ask,
15 "Hey, how many other people have died of heatstroke?" To
16 anyone?

17 A. Yes. I had that discussion with Dr. Linthicum and
18 Rick Thaler.

19 Q. Okay. Did Rick Thaler tell you about any of the
20 deaths between 1998 and 2004?

21 A. As I recall we had the discussion of prior years
22 back. I can't tell you specifically if it went back to 2000 --
23 I can't recall if it went all the way back to '98.

24 Q. All right. So Mr. Thaler clearly told you about
25 prior deaths by heatstroke, you just don't have a specific

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1 memory if it included the 1998 to 2004 deaths?

2 A. Correct.

3 Q. Okay. You also had this conversation with Lannette
4 Linthicum, who is the director of Health Services?

5 A. That's correct.

6 Q. Do you recall her telling you about prior heatstroke
7 deaths before 2011?

8 A. I recall --

9 Q. During this meeting of July--

10 A. I recall a discussion with her with respect to the
11 deaths, I believe, in 2008. It may have been 2007. I'm not
12 clear on the exact dates.

13 Q. Yeah.

14 A. Without the list in front of me.

15 Q. Fair enough.

16 And is that a separate conversation from the
17 conversation you were talking about with Mr. Thaler and
18 Dr. Linthicum in late July early August, 2011?

19 A. I don't recall, and I have ongoing discussions with
20 the -- with Dr. Linthicum and the correctional institution's
21 division director, irrespective of who it is. I can't recall
22 exact conversation or whether they were both in my office at
23 the same time. I don't think they were. I think they were
24 individual and separate conversations.

25 Q. Well, it's important for me to know, do you believe

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1 not responsible for specifically adhering to the policies and
2 procedures that are -- that are established to -- to govern and
3 guide our employees who, in fact, do deliver the operations day
4 in and day out on our facilities.

5 Q. (BY MR. EDWARDS) Okay. But as the chief executive
6 of the Texas Department of Criminal Justice, your job is to
7 make sure that policies you have in place work, right?

8 A. My job through -- through the staff who work for me
9 and who are tasked with the responsibility of making
10 recommendations, reviewing, and analyzing and studying the very
11 aspects of our -- of our operations, to include heat and heat
12 stress, my responsibility is to make sure that I have the right
13 team in place who, in fact, do handle these responsibilities,
14 both in terms of operationalizing the policies that are in
15 place and also making changes to and modifying policies when --
16 when it's necessary.

17 Q. Okay. Cardiovascular disease, sir, is, in fact, a
18 comorbidity that can affect heat tolerance, correct?

19 A. Again, it's listed on this list; so I would think so.

20 Q. The agency acknowledges that cardiovascular disease
21 is, in fact, a comorbidity that may affect heat tolerance?

22 A. Yes, sir.

23 Q. Likewise, the agency acknowledges that cirrhosis of
24 the liver is a comorbidity or condition that can affect heat
25 tolerance?

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1 reviewed both for the specifics for that particular case and
2 whether -- how it fits into the overall trend. One of the
3 things that we have put in place after 2011 is every -- every
4 death during the summer months that is -- that appears to be in
5 any -- in any way, shape, or form anything other than an
6 accidental death, I won't get the exact term of art correct,
7 but there is an additional review of all deaths that occur
8 during that time frame so that we cast an especially wide net
9 to make sure that that everything is reviewed as -- as it
10 should be.

11 Q. Well, wouldn't it be safer to have a policy in place
12 where all inmates over 65 were on wellness checks during the
13 summer months?

14 A. I don't know.

15 Q. Have you ever asked any of your medical providers or
16 health services team whether it would be safer to have
17 everybody on a wellness check?

18 A. I have not.

19 Q. Over 65 in the summer months?

20 A. I have not asked that specific question.

21 Q. Isn't that the job of the policy maker to ask those
22 questions, sir?

23 A. I don't know.

24 Q. You don't know if that's your job?

25 A. I asked --

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1 A. What I'm -- what I'm testifying to is that I do not
2 know for sure that you can eliminate heatstroke deaths --
3 eliminate by reducing the heat.

4 Q. Well, have you asked any medical provider that
5 question?

6 A. Within the context of my dialogue with my senior
7 staff, specifically Dr. Linthicum, we have talked about a
8 variety of aspects of offender health, offender illness,
9 offender death, specifically as it relates to heat. I'm not
10 sure I framed the question exactly as you've stated.

11 Q. So that would be, no, you haven't asked any medical
12 provider if you could eliminate heatstroke deaths inside your
13 prison system by eliminating extreme heat?

14 A. I believe I just answered that, but I've -- I've not
15 posed the question exactly as you've posed it.

16 Q. Shouldn't you have posed that question a long time
17 ago to Lannette Linthicum or some other doctor?

18 A. The questions I've posed to Dr. Linthicum are, I
19 believe, inclusive of open-ended questions that seek to clarify
20 and inform me as to what, if any, additional steps we, as an
21 agency, need to take, which gives her the broad latitude to
22 recommend any number of things to include reducing
23 temperatures. So I believe that my questions were more
24 comprehensive and impactful than just the narrow language that
25 you've chosen in this question. But to infer that I have not

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1 A. Again, the dialogue and discussions I've had with my
2 division director, specifically Bill Stephens and
3 Dr. Linthicum, have been expansive and open ended and broad,
4 which would have included the opportunity to have that
5 discussion.

6 Q. Well, you always have the opportunity to have that
7 discussion. Do you recall --

8 A. Let me -- let me clarify. The discussions and the
9 questions that I asked are broad and open ended such that the
10 division directors and the experts in this agency have had an
11 opportunity to recommend and to discuss with me the elements of
12 and contributions of air-conditioning in our facilities. To
13 infer that I have not asked that question or other questions
14 again, I think is inaccurate.

15 Q. Well, do you recall, specifically, posing questions
16 about how effective air-conditioning would be in terms of
17 eliminating all these heatstroke deaths that you've had?

18 A. I've not posed the question exactly as you've framed
19 it.

20 MR. EDWARDS: Could you get me the 2009 letter?

21 Q. (BY MR. EDWARDS) Sir, yesterday, I believe you
22 talked a lot about the unpredictable nature of the 2011 summer.
23 Am I accurately recalling your testimony?

24 A. I believe what I've testified to is that it was a
25 record heat wave, that it was a record heat event, both in

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1 right?

2 A. Again, it would depend on the specific
3 characteristics of the offender population that would be moved.
4 It would depend on the size of the cohort. There would be a
5 variety of factors that would have to be considered to include
6 the housing -- the housing decisions and needs of those
7 offenders that would be displaced from the facilities that
8 are -- that these offenders would be moved to.

9 Q. Sure. Just a couple of more questions about this.

10 You move people if hurricanes are going to come
11 through, right?

12 A. Depending on the circumstances and the details of --

13 Q. During Hurricane Ike, you evacuated several prisons,
14 right?

15 A. Yes, sir.

16 Q. That was challenging logistically, right?

17 A. I think that's a fair characterization.

18 Q. You got it done, right?

19 A. Yes, sir.

20 MR. EDWARDS: Could you hand them that 2009
21 letter?

22 Q. (BY MR. EDWARDS) Sir, I want to move back to you
23 being updated about heat deaths of inmates.

24 MR. EDWARDS: Yes, please.

25 Q. (BY MR. EDWARDS) And I'm going to hand you a

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1 document that was authored by Lannette Linthicum and sent to
2 you. I believe it's Exhibit 9.

3 THE COURT: You're going to give it to the
4 witness?

5 MR. EDWARDS: Yes, please.

6 (Exhibit 9 marked.)

7 Q. (BY MR. EDWARDS) Take a moment and look over that
8 document. When you've had sufficient time to review that
9 document, would you please identify it for the jury and the
10 Court?

11 A. Identify the document?

12 Q. Yes, sir.

13 A. This is a memo from Dr. Linthicum to myself dated
14 October 26, 2009, in reference to James Shriver, date of death
15 August 8, 2007.

16 Q. Would you read the RE line please?

17 A. Could I read the what?

18 Q. The R-E, I call it the RE line, maybe the reference
19 line.

20 A. Heat-related deaths, 2007 to present.

21 Q. And would you read the date of that document?

22 A. June 26th, 2009.

23 Q. Did you read this document?

24 A. Yes.

25 Q. Did you read it around June 26th, 2009, or

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1 thereabouts?

2 A. I don't recall what day, but it would be consistent
3 with my habit to read memos from my division directors --

4 Q. You think you read it --

5 A. -- when they arrived to my office.

6 Q. All right. It looks look you've got two deaths
7 in 2007 where people died of hypothermia while they were
8 inside; is that correct?

9 A. Correct.

10 Q. Well, did you ask Dr. -- did you have a meeting with
11 Dr. Linthicum about this?

12 A. Dr. Linthicum and I meet regularly and often. I know
13 that we discussed this memo and its contents during one of our
14 meetings.

15 Q. Okay. Why did you limit it from 2007 to the present?
16 Why not include -- I don't know. Why don't you go ten years
17 back?

18 A. I was the recipient of this memo. I don't recall
19 specifically the details surrounding Dr. Linthicum structuring
20 this memo to include only those 2007 deaths.

21 Q. Did you ask her to prepare the memo, or did people in
22 your office ask her to prepare the memo, or did she just do
23 this on her own?

24 A. I don't recall.

25 Q. Who's Karen Hall?

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1 A. Okay.

2 MS. BURTON: Objection. Sidebar.

3 THE COURT: The sidebar will not come into
4 trial.

5 MR. EDWARDS: I'll withdraw it. That's fine.

6 THE COURT: Okay.

7 Q. (BY MR. EDWARDS) In 2009, you were actually made
8 aware of a type of individual who was vulnerable to heat death
9 on two occasions in 2007, correct?

10 A. Through dialogue with my team and this memo, yes.

11 Q. Okay. Now this memo comes from Dr. Linthicum,
12 correct?

13 A. That's correct.

14 Q. Does she have the authority to on her own
15 air-condition any aspect of a housing unit?

16 A. No.

17 Q. Who else on your team were you discussing this with
18 in 2009? Would that be Mr. Thaler?

19 A. Mr. Thaler was the correctional institution's
20 director then, and the vast majority of my dialogue and
21 discussion about operations within our correctional
22 institutions would have been with him.

23 Q. Would it have included his deputy, William Stephens?

24 A. On occasion, but more regularly with Rick Thaler.

25 Q. Okay. And I trust -- did you talk about this with

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1 died inside of hypothermia in 2009, 2010, or 2011?

2 A. I don't recall what changed between those three
3 years.

4 Q. Well, did you change anything about your policies
5 between 2007 and 2011?

6 A. I can't recall specifically what changes may or may
7 not have occurred on those policies and practices during that
8 time frame.

9 Q. Okay. Well, you were made aware that two -- every
10 death is serious, right? That's what you told me?

11 A. Yes, sir.

12 Q. Okay. And Lannette Linthicum alerted you to a
13 problem that these people died because it was really hot inside
14 the prison system, right?

15 A. I'm not sure this memo directly states that. Let me
16 read it again.

17 Q. Or to that effect? I'm not asking you for a verbatim
18 recitation, but as the chief policy maker for the agency, isn't
19 that what this memo is telling you and the point of the memo?

20 A. I would not immediately conclude that that was the
21 point of memo.

22 Q. All right. Well, what did you conclude was the point
23 of memo, sir?

24 A. She was -- again, I don't recall the exact specifics
25 as to why this was memo was generated, whether I asked for it

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1 Q. Well, would a fair characterization of this memo be
2 that Dr. Linthicum is sounding the alarm about a potential
3 problem with regards to inmates who have these vulnerabilities?

4 A. No. That's not a fair characterization.

5 Q. She said, "Look even though these people died, we
6 shouldn't make any changes"?

7 A. I wouldn't characterize that she said that either,
8 specifically, in this memo.

9 Q. Well, you didn't make any changes as a result of this
10 memo, did you?

11 MS. BURTON: Objection. Assumes facts not in
12 evidence.

13 THE COURT: Well, he just asked him whether
14 changes were made or not, and I think this witness is competent
15 to answer that.

16 MS. BURTON: Well, I would ask that he look at
17 all the policies.

18 THE COURT: He can look at anything he wishes
19 to. Let's let him ask for it though, if...

20 A. I don't recall all the specific elements of all the
21 policies surrounding this during that time frame.

22 Q. (BY MR. EDWARDS) Okay. Is it -- do you know if any
23 sort of analysis has been done of the 20 documented hypothermia
24 deaths in the system as to how many of them were on mental
25 health or psychiatric medications?

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1 Q. 100 percent of the time, right?

2 A. We strive for 100 percent success on a whole range of
3 things, particularly inmate safety.

4 Q. Would you directly answer this question? Inmate
5 safety is important 100 percent of the time; correct?

6 A. That's correct.

7 Q. Okay. Assume that there's a form called a HSM-18,
8 okay, that has a variety of restrictions that can placed on
9 inmates. Assume that to be correct. Would it be within your
10 power, sir, as the executive director of the Texas Department
11 of Criminal Justice, to add an additional line to make it
12 easier for clinicians to recommend air-conditioned housing, if
13 you felt like it?

14 A. It depends on if the form you're referencing is a
15 correctional managed healthcare or whether it's a TDCJ form. I
16 think it's important to note that even if it's within my power
17 to add a line for check off, it would be foolish to assume that
18 I ought to end, you know -- fashion in the corner office to
19 devise myself what the policies and procedures ought to be for
20 operations on our facilities. My expectation is, and our
21 practice is, that the number of multidisciplines are included
22 in the process of policy making and the right proponents within
23 the agency, all of whom have direct operating experience and
24 expertise, play a role in developing our policies and
25 procedures. It would be, I believe, both ineffective and

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1 inappropriate for me just to simply dictate a certain element
2 be either removed or included on our operating policies, even
3 if I have the specific power to do so.

4 Q. You don't believe that if you are given information
5 which would dictate the need for an additional policy, that you
6 should do that, sir?

7 A. That's a different question than you previously asked
8 me that -- and that I answered.

9 Q. Why don't you answer that one, sir?

10 A. Repeat it, please.

11 MR. EDWARDS: Abby, would you please ask the
12 question to Director Livingston?

13 (Requested portion read back.)

14 A. Okay. This particular question, unless you expect me
15 to devise the policy in my office, the way I would respond to
16 this question is that, clearly, if I'm given information that
17 would necessitate the creation of a new policy, I would have,
18 and do have, dialogue and discussion with my staff, and then
19 the right cohort of individuals within our agency from
20 multidisciplines and multifunctions would begin that effort,
21 but more practically and more regularly, those individuals who
22 are in our agency working on the front lines, working on our
23 units, managing and leading our units, and supervising those
24 who do so, are proactive in the process as it relates to policy
25 adjustment, policy modification, and policy creation, is

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1 handled from the bottom up in that respect by those staff who
2 have responsibility of carrying them out. But, yes, I would be
3 involve and am involved as it relates to having discussion with
4 staff about, again, the general parameters of what we do.

5 Q. (BY MR. EDWARDS) If you wanted to, sir, add a line
6 to a housing recommendation form, you could do so, but you're
7 choosing not to, correct?

8 A. Given the narrow parameters of that question, yes.

9 Q. Okay. You ever had a conversation about the dangers
10 of heat with Kyle Janek?

11 A. I don't recall that I have.

12 Q. You ever had a conversation about the deaths in the
13 Texas prison system with Kyle Janek?

14 A. I don't recall that I have.

15 Q. You ever have a conversation with anybody on the
16 CMHCC board about the deaths by heatstroke in the Texas prison
17 system?

18 A. Two of the individuals who I rely on regularly are --
19 are regular participants on correctional managed healthcare
20 board and meetings, Dr. Linthicum and Bryan Collier, deputy
21 executive director. I have multiple and ongoing conversations
22 with both of them, Bryan Collier, in particular, on a broad
23 range of topics more extensively than in healthcare, and I also
24 know just by in daily practice in terms of how we manage and
25 lead, that Bryan Collier has much more frequent and ongoing

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1 Q. Sure.

2 A. -- I had in front of me yesterday includes a more
3 comprehensive list of those changes.

4 Q. Well, is it -- is the biggest one, the most important
5 one from your perspective, the wellness checks or are they all
6 just the same?

7 A. I wouldn't say they're all just the same. I'm not
8 sure I would characterize the wellness check as the most
9 important. I think it's a very significant addition to our
10 process, particularly as relates to those wellness checks and
11 the identification of --

12 Q. What is your understanding?

13 A. -- at our intake facilities.

14 Q. When you say "intake facilities," do you mean
15 transfer facilities?

16 A. Not all of our transfer facilities are set up to be
17 intake facilities for the processing of offenders coming into
18 our system, but I believe it's fair to say that most of our
19 intake facilities are also transfer facilities.

20 Q. Okay. And what you're -- okay. We're talking -- the
21 Gurney Unit is a transfer facility?

22 A. That's correct.

23 Q. The Hutchins Unit is transfer facility?

24 A. The Hutchins Unit is a state jail.

25 Q. Is it also a transfer facility, sir?

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1 A. It's designated as state jail. Our state jails
2 oftentimes house transfer offenders as well.

3 Q. So would that be: Yes, it is also a transfer
4 facility?

5 A. Yes.

6 Q. Garza West and Garza East, those are both transfer
7 facilities?

8 A. Correct. One of the two of them is an intake
9 facility.

10 Q. Okay. Before 2012, inmates weren't placed on
11 wellness checks until they had their intake physical; is that
12 correct? Or do you know?

13 A. I don't recall specifically the timing of all those
14 intake activities or when they are identified for a list. I
15 know we have moved upstream, so to speak, so that offenders are
16 assessed even before they exit the bus upon arrival at our
17 system.

18 Q. A --

19 A. I would have to refer to our documents as to whether
20 that was in place in 2012 or not.

21 Q. Okay. How many people died -- are you aware of died
22 at Gurney Unit from heatstroke due to environmental conditions
23 inside?

24 A. I can't speak to whether they died to heatstroke due
25 to the environmental conditions inside. I believe through the

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1 in 2011, it's not unreasonable to do so.

2 Q. Well, I think it's more than not unreasonable to do
3 so. Let me withdraw that.

4 Anything preventing you from having a procedure
5 in place to notify your board of heatstroke deaths in the Texas
6 prison system?

7 A. Not that I'm aware of, no.

8 Q. That's your decision, right?

9 A. It would ultimately be, I'm sure.

10 Q. You didn't notify them in 2009 despite Sylvester
11 Turner asking for update about heat-related deaths, to your
12 knowledge?

13 A. I don't recall.

14 Q. This is: Should you have?

15 A. I thought you asked me if I did.

16 (Simultaneous cross-talk.)

17 Q. (BY MR. EDWARDS) It was a follow-up question. I
18 know you didn't. Now my question is: Should you have notified
19 your board in 2009 about these confirmed heatstroke deaths?

20 A. Again --

21 Q. And if you don't think you should have, then say so.

22 THE COURT: Just a second. Let him finish his
23 answer.

24 MR. EDWARDS: Sorry.

25 A. With the benefit of hindsight, particularly with the

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1 benefit of the events in 2011, I wouldn't take issue with the
2 assumption that it would make sense to do so. What you're
3 asking me is with -- whereas I'm interpreting the question:
4 Should I have at the time? At the time, they appeared to be
5 isolated incidents. They appeared not to be, from my
6 perspective when I look at the entirety of the system, which
7 is -- which is important, it would not have appeared to be the
8 type of incident that I would automatically pick up the phone
9 and notify the board chair.

10 What I don't know, again, without checking our
11 documents and with staff is, what all is included in our
12 notification of the board for incidents on our facilities.

13 Q. (BY MR. EDWARDS) How many homicides do you have in a
14 given summer?

15 THE COURT: Within the prison system at large?

16 MR. EDWARDS: Thank you, sir, yes.

17 Q. (BY MR. EDWARDS) Within the prison system at large.

18 A. I'm not sure I could answer that within the summer.
19 I know with respect to a given year. Some years it would be 0.
20 Some years it would be 1, 2, 3, and some --

21 THE COURT: What's the highest it's ever been?

22 THE WITNESS: I believe one year we had 10 or
23 12. I would have to refer back to our historical documents to
24 recall the exact number, but, ordinarily, it would be in single
25 digits.

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1 Q. (BY MR. EDWARDS) I take it you've never had 10 in a
2 three-month -- one-month period, right?

3 A. I would hesitate to say that we never have.
4 Certainly, during my tenure we have not.

5 Q. Have you ever had 2 at the same prison in a ten-day
6 period?

7 A. I don't recall.

8 Q. Those deaths in 2007 that you were notified about,
9 they were at the same unit, weren't they?

10 A. I believe that's right. The Byrd Unit.

11 Q. That Byrd Unit is a transfer facility, right?

12 A. That's correct.

13 Q. And you spoke yesterday about the well-known danger
14 and "well known" is my word, so if you take issue with it,
15 please let me know.

16 You spoke yesterday of well-known danger in
17 terms of vulnerable inmates acclimating to heat. Okay. Do you
18 recall talking about acclimation yesterday?

19 A. I recall talking about acclimation the and potential
20 danger heat stress poses.

21 Q. Okay. It's well known, and certainly you've known
22 prior to 2007 let's say, that inmates who are vulnerable to
23 heat stress are particularly vulnerable during periods of
24 acclimating to the higher temperatures, correct?

25 A. In the absence of mitigation efforts, correct.

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1 Q. Sure.

2 What mitigation efforts, prior to the deaths in
3 2011 -- or prior to the first death in 2011, did you have in
4 place that were specific to inmates and transfer facilities who
5 you knew to have trouble acclimating to the high temperatures?

6 A. Our practices, processes, and procedures during that
7 time frame are certainly documents that are included in what we
8 have provided for this deposition. I can't speak specifically
9 to those items, but I also know that our processes and
10 procedures and practices in place at that time are focused
11 certainly on recognizing the symptoms of heatstroke and/or heat
12 illness and delivering access to Health care.

13 We have made changes in our practices and
14 procedures over the course of the last several years which are
15 delineated in one of the documents in exhibit here. I can't
16 tell you specifically what --

17 Q. Can you tell me --

18 A. -- what we had in place or have in place with respect
19 to that -- transfer facilities in general.

20 Q. Can you tell me a single precautionary measure that
21 -- well -- strike that.

22 It seems to me, sir, the precautionary measures
23 that you have in place from 2004 until up the summer of 2011
24 were geared towards everyone, without special thought towards
25 to people who are acclimating in transit facilities; is that

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1 fair?

2 A. I'm not sure I would agree with that statement. I
3 know -- certainly, it's important to provide -- or mitigation
4 efforts for everyone in a given housing area. I know that we
5 have paid attention to and -- identified offenders that have
6 medical conditions during the course of the intake process.
7 Again, I can't tell you exactly at what point in that intake
8 process that occurred or -- or back in that time frame or
9 specifically what occurs or the day it occurs at now. I know
10 we have accelerated the review of -- the medical review of
11 assessment of offenders as they are processed into our
12 facilities.

13 Q. Can you name a single precautionary measure that was
14 geared towards people you knew to be danger, including the
15 types of inmates you know to be vulnerable and who were
16 especially vulnerable in the transit facilities while trying to
17 acclimate to the heat, can you name a single precautionary
18 measure that was specifically geared towards those individuals?

19 A. Without looking at those policies and practices and
20 procedures, I would -- I would not recall.

21 Q. Okay. Do you know how many of the ten people that
22 you acknowledge died in the summer of 2011, died in transit
23 facilities shortly after they arrived?

24 A. I would have to look at a complete list to know, but
25 I know several of them did.

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1 Q. Is that your objective? To obtain zero deaths by
2 heatstroke? Is that what you're trying to do with your
3 mitigation measures?

4 A. Our -- excuse me -- our objective is, again, to take
5 the necessary steps with respect to our mitigation practices,
6 to keep the offender population safe from a systemic
7 perspective.

8 Q. You have the ability, don't you, sir, to keep the
9 offender population safe from the dangers of extreme heat if
10 you move them out of the heat, right?

11 A. Could you repeat the question, please.

12 MR. EDWARDS: Abby, would you repeat my question
13 for Director Livingston, please.

14 (Requested portion read back.)

15 A. Again, it would certainly be a mitigation step. I
16 wouldn't disagree with that.

17 Q. (BY MR. EDWARDS) Would it be a more effective and
18 better mitigation step than what you've got currently?

19 A. I don't know.

20 Q. Would it have been a better and more effective
21 mitigation step than what you had in effect before the summer
22 of 2011?

23 A. Again, as I've -- as I've testified, we had a record
24 heat event in 2011 and had made a substantial number of changes
25 to our protocols and practices since then. We had a long

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1 Obviously 2011 trumped the all of the history.

2 Q. Let's go through it again then, because I thought you
3 didn't know.

4 2007 was not a record heat event, correct?
5 According to the staff members you consulted with?

6 A. Okay. What I don't know is whether at the time it
7 was. Okay. I don't -- I don't recall whether at the time in
8 2007 that particular year was a record at the time. I think
9 with the benefit of hindsight and the benefit of passage of
10 time, we now know that 2011 was hotter than those other years.
11 I simply don't know.

12 Q. If you don't know, that's fine. But you've given
13 some conflicting -- I want to know for sure.

14 A. Within the context of the last -- within the context
15 of the last several weeks and months, I've come to learn from
16 my staff that 2011 was a record heat event and hotter than
17 those other years that we've been discussing.

18 Q. Okay. Who from your staff made you aware of that --
19 that contention? You've come to learn in the last couple of
20 months that 2011 was a record heat event. Who made you aware
21 of that?

22 A. I can't -- I can't recall exactly who made me aware
23 of that. I know, you know, as in my preparations for this
24 deposition.

25 Q. Other than your lawyers, can you name a single person

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1 position can and should use is to have an ongoing network of
2 peers who you discuss a variety of things with a variety of
3 topics with -- which, in fact, I do. I'm very active in the
4 Association of State Correctional Administrators, which is, in
5 fact, the organization for those who hold my position in all 50
6 states and a number of the largest jail systems in the country.
7 We cover a variety of topics and have done so for many years.

8 Q. Have you ever spoken to them about the situation you
9 had to deal with in 2007 with regard to the heat related deaths
10 at the Byrd Unit?

11 A. I don't recall specifically having a discussion about
12 the 2007 deaths at the Byrd Unit.

13 Q. Do you recall ever having discussion with these
14 administrators about the deaths in 2011?

15 A. I recall having discussions with a number of
16 administrators about the topic of heat-related illnesses and
17 then challenges, approaches, and best practices throughout the
18 country with some of my peers, yes.

19 Q. Which ones?

20 A. I don't recall off the top of my head. Again, those
21 meetings include -- everyone's invited to the meetings. They
22 don't always -- you don't always know who's there. I can't
23 remember over the years who I've had certain discussions with
24 on this specific topic or others.

25 Q. Well, if I represent to you that it's my

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1 understanding that the State of Arkansas air-conditions its
2 prisons, is there anything stopping you from contacting them
3 and finding out how they manage to do that?

4 A. No.

5 Q. Could you take a look at --

6 MR. EDWARDS: David, would you hand that exhibit
7 out?

8 Q. (BY MR. EDWARDS) I'm going to show you an ACA
9 standard comment, sir, and I'd like you to take a moment to
10 review it. In particular, I'm going to ask you about No.
11 4.4153, and that's the only one on that page I'm going to ask
12 you about. At least I think so.

13 A. Tell me, again, which one you're going to ask about.

14 Q. 4.4153.

15 (Exhibit 13 marked.)

16 A. Okay.

17 Q. (BY MR. EDWARDS) Looks like as of -- as of 2012 that
18 according to the ACA standards, "Temperatures in indoor living
19 and work areas should be appropriate to the summer and winter
20 comfort zones."

21 Do you see that?

22 A. Yes, sir.

23 Q. And then under there is a comment which says,
24 "Temperatures should be capable of being mechanically raised or
25 lowered to an acceptable comfort level."

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1 Do you see that?

2 A. I do.

3 Q. Did I accurately read that statement?

4 A. I believe so.

5 Q. Would you agree that many of the Texas prisons do not
6 follow that standard?

7 A. My hesitancy in agreeing with you on that is the
8 context of a single page taken out of the entire book. What I
9 don't know is if this is in relation to new construction, for
10 example, or if it's in relation to all of -- all of the
11 standards. What I can say is that the standards -- the
12 accreditation process within ACA has a very small number of
13 voluntarily or discretionary standards in a significant and a
14 number of other standards, which are mandatory. And as I
15 understand it, in order to be accredited, you have 100 percent
16 compliance with those that are mandatory, and to the best of my
17 recollection, 90 percent compliance with the ones that are
18 non-mandatory, and all of our facilities in Texas, in the Texas
19 Department of Criminal Justice are -- are accredited. So by
20 virtue of that -- and we have been reaccredited many times in
21 most cases. So by virtue of that, I can only conclude that we
22 are in overall compliance with ACA standards. Again, without
23 having a context of the entire book here, I can't speak
24 specifically to this.

25 MR. EDWARDS: Let me object as nonresponsive.

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Plaintiffs' MSJ Appx. 6699

Brad Livingston - 10/2/2015

1 Q. In the non air-conditioned area, correct?

2 A. In some of the housing areas that I'd been into, it's
3 fair to say that they have been hot.

4 Q. And those would be the housing areas that -- even the
5 housing areas that you may not even recall being into, based on
6 your acknowledge of the ones that you've been in, you've
7 acknowledged you were well aware prior to summer of 2011 that
8 the housing areas that weren't air conditioned were hot during
9 the summer, fair?

10 A. They can be.

11 Q. Well, let me ask my question again then. Prior to
12 the summer of 2011, based on your experience in many of the --
13 visiting many of the units and experiencing visiting the units
14 non air-conditioned housing areas during the summer months,
15 would you agree with me that housing areas in non
16 air-conditioned facilities are often hot during the summer?

17 A. Yes.

18 Q. And you knew that that heat posed a danger to the
19 inmates that you had to adopt measures to protect them from,
20 correct?

21 A. I'm aware of potential dangers that require ongoing
22 mitigation activities and policies and procedures.

23 Q. Did you discuss with Mr. Thaler or Mr. Stephens the
24 purchase of swine barns?

25 A. No.

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' MSJ Appx. 6700

Brad Livingston - 10/2/2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA
McCOLLUM, individually, and
STEPHANIE KINGREY,
individually and independent
administrator of the Estate
of LARRY GENE McCOLLUM

VS.

CIVIL ACTION NO.
4:14-cv-3253
JURY DEMAND

BRAD LIVINGSTON, JEFF
PRINGLE, RICHARD CLARK,
KAREN TATE, SANDREA SANDERS,
ROBERT FASON, the UNIVERSITY
OF TEXAS MEDICAL BRANCH and
the TEXAS DEPARTMENT OF
CRIMINAL JUSTICE

* * * * *

REPORTER'S CERTIFICATION
DEPOSITION OF BRAD LIVINGSTON
October 2, 2015
VOLUME 2

* * * * *

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
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Plaintiffs' MSJ Appx. 6701

Brad Livingston - 10/2/2015

1 I, ABIGAIL L. GUERRA, Certified Shorthand Reporter,
2 in and for the State of Texas, hereby certify to the following:

3 That the witness, BRAD LIVINGSTON, was duly sworn by
4 the officer and that the transcript of the oral deposition is a
5 true record of the testimony given by the witness;

6 I further certify that pursuant to Federal Rules of
7 Civil Procedure (30)(e)(1)(A) and (B) as well as Rule
8 (30)(e)(2) that the signature of the deponent:

9 I further certify that pursuant to FRCP Rule
10 30(f)(1) that the signature of the deponent:

11
12 X was requested by the deponent or a party before
13 the completion of the deposition and that signature is to be
14 before any notary public and returned within 30 days from date
15 of receipt of the transcript.

16 If returned, the attached Changes and Signature Page
17 contains any changes and the reasons therefore:

18
19 _____ was not requested by the deponent or a party
20 before the completion of the deposition.

21
22 That \$ _____ is the deposition
23 officer's charges for preparing the original deposition
24 transcript and any copies of exhibits, charged to STEPHEN
25 McCOLLUM and SANDRA McCOLLUM, individually, and STEPHANIE

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' MSJ Appx. 6702

Brad Livingston - 10/2/2015

1 KINGREY, individually and independent administrator of the
2 Estate of LARRY GENE McCOLLUM, individually and on behalf of
3 those similarly situated;

4
5 That pursuant to information given to the deposition
6 officer at the time said testimony was taken, the following
7 includes all parties of record:

8 FOR THE PLAINTIFFS:

9 STEPHEN McCOLLUM and SANDRA McCOLLUM, individually, and
10 STEPHANIE KINGREY, individually and independent administrator
of the Estate of LARRY GENE McCOLLUM

11 Mr. Jeff Edwards
12 Mr. Scott Medlock
EDWARDS LAW
13 1101 East 11th Street
Austin, Texas 78702
Phone: (512) 623-7727

14 - and -

15 Mr. Michael Singley
16 Mr. David James
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18 Phone: (512) 334-4302

19 FOR THE DEFENDANT:

20 TEXAS DEPARTMENT OF CRIMINAL JUSTICE

21 Ms. Cynthia L. Burton
22 Mr. Matthew Greer
OFFICE OF ATTORNEY GENERAL
300 W. 15th Street
23 7th Floor
Austin, Texas 78701
24 Phone: Phone: (512) 463-2080

25 - and -

WRIGHT WATSON & ASSOCIATES

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Brad Livingston - 10/2/2015

1 Ms. Sharon Felfe Howell
TEXAS DEPARTMENT OF CRIMINAL JUSTICE - GENERAL COUNSEL
2 209 West 14th Street
Suite 500
3 Austin, Texas 78711
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4

5 FOR THE WITNESS:
UTMB
6

Ms. J. Lee Haney
7 Ms. Shanna Molinare
Office of Attorney General
8 300 W. 15th Street
7th Floor
9 Austin, Texas 78701
Phone: (512) 463-2080
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- and -
11

Mr. Graig J. Alvarez
12 Ms. Kara Stauffer Philbin
FERNELIUS ALVAREZ SIMON, PLLC
13 Lyondell Basell Tower
1221 McKinney Street
14 Suite 3200
Houston, Texas 77010
15 Phone: (713) 654-1200
16
17
18
19

20 I further certify that I am neither attorney, nor
21 counsel for, nor related to, nor employed by any of the parties
22 or attorneys to the action in which this deposition was taken;

23 Further, I am not a relative, nor an employee of any
24 attorney of record in this cause, nor am I financially or
25 otherwise interested in the outcome of the action.

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' MSJ Appx. 6704

Brad Livingston - 10/2/2015

1 Certified to by me this 16th day of October, 2015.

2
3
4 

5
6 ABIGAIL GUERRA, Texas CSR 9059

7 Expiration Date: 12/31/15

8 WRIGHT WATSON & ASSOCIATES

9 Firm Registration No. 225

10 Expiration Date: 12-31-15

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Plaintiffs' MSJ Appx. 6705

Major Matthew McClarin - 7/14/2015

1 ORAL DEPOSITION OF MAJOR MATTHEW MCCLARIN, produced
2 as a witness at the instance of the Plaintiffs, and duly sworn,
3 was taken in the above-styled and numbered cause on the 14th
4 day of July, 2015, from 10:29 a.m. to 5:38 p.m., before Abigail
5 Guerra, CSR, in and for the State of Texas, reported by machine
6 shorthand, at the Wallace Pack Unit, 2400 Wallace Pack Road,
7 Navasota, Texas, pursuant to the Federal Rules of Civil
8 Procedure and the provisions stated on the record or attached
9 hereto.

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
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Plaintiffs' MSJ Appx. 6708

Major Matthew McClarin - 7/14/2015

A P P E A R A N C E S

FOR THE PLAINTIFFS:

KEITH COLE, JACKIE BRANNUM, RICHARD KING, DEAN ANTHONY,
MOJICA, RAY WILSON, FRED WALLACE, AND MARVIN RAY YATES,
individually and on behalf of those similarly situated,

Mr. Scott Medlock
EDWARDS LAW
1101 East 11th Street
The Haehnel Building
Austin, Texas 78702
Phone: (512) 623-7727

FOR THE WITNESS AND DEFENDANT:

MAJOR MATTHEW MCCLARIN AND TEXAS DEPARTMENT OF CRIMINAL
JUSTICE

Ms. Cynthia L. Burton
Mr. Matthew J. Greer
OFFICE OF ATTORNEY GENERAL
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7th Floor
Austin, Texas 78701
Phone: (512) 463-8020

ALSO PRESENT:

Mr. Cody Ginsel, TDCJ Director
Ms. Debra Allison, Pack Unit Risk Manager
Ms. Jennifer L. Daniel
Mr. Roberto Herrera

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' MSJ Appx. 6709

Major Matthew McClarin - 7/14/2015

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Major Matthew McClarin - 7/14/2015

1 Q. And how -- when does lunch typically end?

2 A. Typically, if it starts at 10:00, it's around --
3 before that count -- well, see the count starts at 12:30. We
4 will have lunch done before 12:30. We will not -- unless
5 there's stipulation.

6 Q. Something happens?

7 A. Something happens.

8 Q. 12:30 to when supper ends at 1600 or 4:00 p.m., is
9 the chow hall being used for anything aside from clean up, the
10 inmate workers eat their meals? Anything else going on there?

11 A. That -- that's it.

12 Q. And what time does supper usually end?

13 A. Supper is usually done before 6:00, unless their
14 counts, you know, unless there's some -- some area that takes
15 longer, but usually between 6:00 to 6:15 time, but way before
16 that 6:30 count they're done. They will not start counting
17 until the meal is done.

18 Q. Okay.

19 A. That's kind of your buffer zone is they'll have
20 everything done before the counts.

21 Q. Sure. Okay. Okay.

22 Major, is there any -- well let me -- okay.

23 Major, is there any security reason why the
24 armory at the Pack Unit is air-conditioned?

25 MR. GREER: That's not --

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Major Matthew McClarin - 7/14/2015

1 MS. BURTON: It is -- it's outside -- I'm going
2 to object. It's outside his 30(b)(6) notice.

3 You can answer if you know, but not speaking for
4 TDCJ, just if you know.

5 Q. (BY MR. MEDLOCK) Answer the question if you know.

6 A. Oh, I can answer the question. Again, it's outside
7 our compound, our armory. It's away from -- no inmates have
8 any type of access to our armory at all for any reason at all.
9 Also, we have, based on our equipment that we have in the
10 armory with our chemical agents that we have, with our
11 ammunition, with our guns that we store, we try to have that
12 placed with some sort of AC to make sure that it doesn't
13 overheat or get too hot, and then we have an explosion -- an
14 unnecessary explosion.

15 Q. Make sure the weapons keep functioning. Is that
16 fair?

17 A. Yes.

18 Q. Is there -- is there officers stationed at the
19 armory?

20 A. There's an officer that's assigned to the armory.

21 Q. One of the things you need staff for at the Pack Unit
22 is supervising inmate movement? Is that a fair statement?

23 A. Yes.

24 Q. Is it fair to say that security is also a concern
25 when inmates are being moved around?

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO.
4:14-cv-1698

V.

Defendants.

* * * * *

That the witness, MAJOR MATTHEW MCCLARIN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

Plaintiffs' MSJ Appx. 6713

Major Matthew McClarin - 7/14/2015

1 I further certify that pursuant to Federal Rules of
2 Civil Procedure (30)(e)(1)(A) and (B) as well as Rule
3 (30)(e)(2) that the signature of the deponent:

4 I further certify that pursuant to FRCP Rule
5 30(f)(1) that the signature of the deponent:
6

7 X was requested by the deponent or a party before
8 the completion of the deposition and that signature is to be
9 before any notary public and returned within 30 days from date
10 of receipt of the transcript.

11 If returned, the attached Changes and Signature Page
12 contains any changes and the reasons therefore:
13

14 was not requested by the deponent or a party
15 before the completion of the deposition.
16

17 That \$ is the deposition
18 officer's charges for preparing the original deposition
19 transcript and any copies of exhibits, charged to PLAINTIFFS
20 KEITH COLE, JACKIE BRANNUM, RICHARD KING, DEAN ANTHONY, MOJICA,
21 RAY WILSON, FRED WALLACE, AND MARVIN RAY YATES, individually
22 and on behalf of those similarly situated;
23

24 That pursuant to information given to the deposition
25 officer at the time said testimony was taken, the following

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
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Plaintiffs' MSJ Appx. 6714

Major Matthew McClarin - 7/14/2015

1 includes all parties of record:

2 FOR THE PLAINTIFFS:

3 KEITH COLE, JACKIE BRANNUM, RICHARD KING, DEAN ANTHONY,
4 MOJICA, RAY WILSON, FRED WALLACE, AND MARVIN RAY YATES,
5 individually and on behalf of those similarly situated,

6 Mr. Jeff Medlock
7 EDWARDS LAW
8 1101 East 11th Street
9 The Haehnel Building
10 Austin, Texas 78702
11 Phone: (512) 623-7727

12 FOR THE WITNESS AND DEFENDANT:

13 TEXAS DEPARTMENT OF CRIMINAL JUSTICE

14 Ms. Cynthia L. Burton
15 OFFICE OF ATTORNEY GENERAL
16 300 West 15th Street
17 7th Floor
18 Austin, Texas 78701
19 Phone: (512) 463-2080

20 I further certify that I am neither attorney, nor
21 counsel for, nor related to, nor employed by any of the parties
22 or attorneys to the action in which this deposition was taken;

23 Further, I am not a relative, nor an employee of any
24 attorney of record in this cause, nor am I financially or
25 otherwise interested in the outcome of the action.

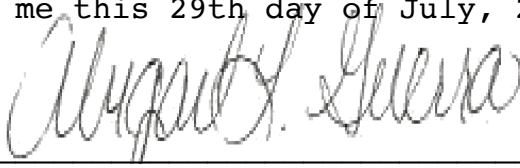
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Plaintiffs' MSJ Appx. 6715

Major Matthew McClarin - 7/14/2015

1 Certified to by me this 29th day of July, 2015.

2 

3 ABIGAIL GUERRA, Texas CSR 9059

4 Expiration Date: 12/31/15

5 WRIGHT WATSON & ASSOCIATES

6 Firm Registration No. 225

7 Expiration Date: 12-31-15

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Plaintiffs' MSJ Appx. 6716

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN MCCOLLUM, et al,
Plaintiffs,

V.

BRAD LIVINGSTON, et al,
Defendants.

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C.A. No. 3:12-CV-02037

ORAL DEPOSITION OF
SANDRA SUE MCCOLLUM
November 22, 2013

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM, produced as
a witness at the instance of the Defendant University of
Texas Medical Branch and duly sworn, was taken in the
above-styled and numbered cause on the 22nd of
November, 2013, from 10:35 a.m. to 11:58 a.m., before
DEBRA L. MCGREW, CSR in and for the State of Texas,
reported by machine shorthand at the offices of
Edwards Law, 1101 E. 11th Street, Austin, Texas,
pursuant to the Federal Rules of Civil Procedure.

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

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Ms. Shanna Elizabeth Molinare
Assistant Attorney General
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ROBERT EASON AND JEFF PRINGLE:

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BILL STEPHENS:

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Phone: 512-463-2080

ALSO PRESENT:

Jennifer Osteen
Stephanie Kingrey
Stephen Michael McCollum

--*-*

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

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9	(No exhibits were marked during this deposition).	
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Sunbelt Reporting & Litigation Services

Austin Bryan/College Station Corpus Christi Dallas/Fort Worth East Texas Houston San Antonio

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

1 any medical problems?

2 A. Ma'am, all that I know of -- he -- he didn't
3 take no medication or nothing while we were together.
4 He did not go see a doctor while we were together. Only
5 thing he took was maybe Tylenol if he had a headache or
6 something. That's the only medication I knew of.

7 Q. Did he ever mention whether he had ever been
8 diabetic in the past?

9 A. Not in the past, but while he was in the -- the
10 jail there in Waco, he had told me that they had done
11 some blood work and it showed his blood sugar was up and
12 they were going to give him medication for it.

13 Q. For diabetes?

14 A. For diabetes, yes, ma'am.

15 Q. But during the time that you were married, you
16 don't recall him ever being diagnosed with diabetes?

17 A. No medication that I knew of.

18 Q. And he didn't take any shots of insulin or --

19 A. No, ma'am.

20 Q. Okay. What about high blood pressure? When
21 y'all were living together, did he ever take any high
22 blood pressure medicine?

23 A. No, ma'am.

24 Q. And when he was at the McLennan County Jail, do
25 you remember if he told you about any --

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

1 A. Blood pressure? They checked his blood
2 pressure. It was up. They didn't know whether it was
3 because he just got put in jail or why it was raised,
4 but they did give him medication for blood pressure.

5 Q. Do you know what they gave him?

6 A. I'm not for sure of the type of medicine they
7 gave him, no, ma'am.

8 Q. Okay. Do you know how often he took it?

9 A. I don't know how often, but he was taking it
10 every day. They were giving it to him every day while
11 he was there.

12 Q. Okay. And -- and do you know while he was in
13 McLennan County Jail what -- what medicine, if any, that
14 he got for diabetes?

15 A. I'm not for sure the type of medicine, ma'am.

16 Q. Okay. Do you know if he was even getting any?
17 Sometimes --

18 A. He told me hisself that they were giving him
19 the medication for the diabetes and for the high blood
20 pressure. They had started him on it.

21 Q. Okay. Did he say anything about whether he was
22 feeling better because of that?

23 A. No, ma'am, he didn't say.

24 Q. Were there any other conditions that he told
25 you they had found while he was in the McLennan County

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN MCCOLLUM, et al,
Plaintiffs,

V.

BRAD LIVINGSTON, et al,
Defendants.

)
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)
)
)
)
)

C.A. No. 3:12-CV-02037

ORAL DEPOSITION OF
STEPHEN MICHAEL MCCOLLUM

November 22, 2013

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM,
produced as a witness at the instance of the Defendant
University of Texas Medical Branch and duly sworn, was
taken in the above-styled and numbered cause on the 22nd
of November, 2013, from 3:35 p.m. to 5:22 p.m., before
DEBRA L. MCGREW, CSR in and for the State of Texas,
reported by machine shorthand at the offices of Edwards
Law, 1101 E. 11th Street, Austin, Texas, pursuant to the
Federal Rules of Civil Procedure.

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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Austin, Texas 78702
Phone: 512-623-7727

FOR THE DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH:

Ms. Kim Coogan
Ms. Shanna Elizabeth Molinare
Assistant Attorney General
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Austin, Texas 78711-2548
Phone: 512-463-2080

FOR THE DEFENDANTS TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
ROBERT EASON AND JEFF PRINGLE:

Mr. Jonathan Stone
Assistant Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-463-2080

FOR THE DEFENDANTS BRAD LIVINGSTON, RICK THALER AND
BILL STEPHENS:

Mr. Kyle M. Smith
Assistant Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-463-2080

ALSO PRESENT:

Jennifer Osteen
Stephanie Kingrey
Sandra Sue McCollum

--*-*

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

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(No exhibits were marked during this deposition).	

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

1 A. Her name was Nicole, NICOLE, maiden name
2 Jorgenson, and now it's -- she's remarried.

3 Q. And were you ever married to anybody else?

4 A. No. Just that and my current wife.

5 Q. Okay. I want to ask you some questions
6 primarily about your father.

7 A. Yes, ma'am.

8 Q. Many of them are going to be the same.

9 A. I understand.

10 Q. Do you know whether your father was ever
11 diagnosed with diabetes?

12 A. I do not. I only know what he told my sister
13 as -- as far as like them saying that he had diabetes
14 while he was in -- in jail because of his blood sugar
15 and things like that and them putting him on medicine
16 for diabetes while in jail.

17 Q. Okay. So you -- you just told me a lot of
18 stuff in that one little sentence.

19 A. Okay. Sorry.

20 Q. That's okay. Did -- is it -- okay.

21 What is your understanding of who told
22 your dad that he had diabetes?

23 A. I'm --

24 Q. Or tell me that again.

25 A. Okay. I would say whenever he went to jail in

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

1 Bonham, that's whenever, to my understanding, he was
2 told that he had diabetes, because of his blood sugar
3 and his heart -- blood pressure.

4 Q. And that was by somebody at the prison the
5 first time he went when he went to the Bonham unit or
6 the --

7 A. Yes, ma'am.

8 Q. -- unit that's in Bonham?

9 A. Yes, ma'am.

10 Q. Okay.

11 A. And that was mainly just, you know, hearing
12 what he said they made him take while he was in prison.

13 Q. And what did you hear him say they made him
14 take?

15 A. Diabetic medication, not -- not insulin. I do
16 not know the name of the medication, though.

17 Q. Okay. And did your dad tell you that, or did
18 your sister tell you that?

19 A. It's just a combination of things I've heard
20 over the years. You know, his brother Terry and I went
21 and picked him up from that prison and so, you know, his
22 brother knew a lot more about his condition because he
23 lived with his brother for a while, and I just remember
24 hearing that over the years. I couldn't tell you
25 exactly when.

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

1 get involved with it. That's just how he was.

2 Q. Did -- Did he say whether -- and I -- I think I
3 know the answer to this, but did he say whether your dad
4 had asked the guards or the other people for either a
5 cup or a lower bunk or different shoes that was denied?
6 Do you see what I'm saying?

7 A. He did not say that specifically, no. I -- I
8 do not know the answer to that.

9 Q. Okay. And -- and I assume you never got a call
10 from your dad saying, Hey, can you send me a cup and
11 some shoes?

12 A. I did not. I -- I wish I would have.

13 Q. Did you consider your father to be disabled?

14 MR. MEDLOCK: Object to the extent that it
15 calls for a legal conclusion.

16 Q. (BY MS. COOGAN) Okay. Go ahead.

17 A. In -- during that time, yes, because -- because
18 of his knee and his obesity, yes, I -- disabled, yes.

19 Q. Because of his knee and his obesity?

20 A. Yes, ma'am.

21 Q. Okay. And his knee being from the automobile
22 accident?

23 A. Yes, ma'am.

24 Q. Did his doctor from the automobile accident
25 give him any kind of a cane or special walking

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

1 equipment?

2 A. To my knowledge, he -- he had a boot on for a
3 while, and that was removed long before going to
4 McLennan County.

5 Q. And, yet, for some -- whatever reason, it
6 really never did get right again?

7 A. Yes, ma'am, I -- I believe due to his weight.

8 Q. His weight. Okay.

9 Did you ever -- did you feel like you were
10 right with your dad when he passed?

11 A. Yeah, because a lot of the things that happened
12 when we were -- when I was a kid, I'd already talked to
13 him after I'd become an adult, you know, just pretty
14 much what not to do. I -- I forgave him for all of that
15 long before he went to prison.

16 Q. Since he passed away, I heard your sister say
17 that she's really struggled with it and is seeing a
18 counselor now.

19 A. Yes, ma'am.

20 Q. Have you sought any kind of counseling?

21 A. I have not.

22 Q. Do you think that you need to seek some
23 counseling?

24 A. Not really. I -- I have, you know, friends and
25 family that I speak with about things and I -- I don't

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

.....
STEPHEN McCOLLUM, STEPHANIE
KINGREY, and SANDRA McCOLLUM,
individually and as heirs
at law in the Estate of
LARRY GENE McCOLLUM,
Plaintiffs,

VS.

BRAD LIVINGSTON, JEFF PRINGLE,
RICHARD CLARK, KAREN TATE,
SANDREA SANDERS, ROBERT EASON,
THE UNIVERSITY OF TEXAS
MEDICAL BRANCH and the TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
Defendants.

CIVIL ACTION NO.

3:12-cv-02037

ORAL AND VIDEOTAPED DEPOSITION OF OWEN MURRAY, M.D.

NOVEMBER 20, 2013

.....
ORAL AND VIDEOTAPED DEPOSITION OF OWEN MURRAY,
M.D., produced as a witness at the instance of the
Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on Wednesday, November
20, 2013, from 9:07 a.m. to 12:58 p.m., before Mary C.
Dopico, Certified Shorthand Reporter No. 463 and Notary
Public in and for the State of Texas, reported by
machine shorthand and audio/video recording at the
offices of Rebecca Sealy Hospital, 404 8th Street, Room,
4.204, Galveston, Texas, pursuant to Notice and the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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Owen Murray, M.D.
November 20, 2013

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1 nurse is just not doing that. She's making a mistake or
2 for whatever reason.

3 What's the process that UTMB has in place
4 to remedy that or supervise that or make sure these
5 policies are actually being followed?

6 A. At most facilities, we have a director of
7 nurses and the nursing organization flows under that
8 with our R.N., L.V.N., C.M.A. level care.

9 If there is an issue with anyone's
10 performance, it is -- it works up the chain within that
11 facility. And if that care practice needs to be
12 modified, then the appropriate level individual does
13 that remedial discussion and...

14 Q. Okay. Oh, do you know if there are policies
15 in place with UTMB relating to accommodations and
16 modifications that need to be made with regards to work
17 when dealing with extreme temperatures?

18 A. Again, there are no UTMB specific policies --
19 policies. These are all Correctional Managed Health
20 Care policies; and there is a policy to which we do --
21 provide work restrictions using that HSM 18.

22 Q. Do you know if there are any policies relating
23 to handling extreme temperatures in the housing areas --

24 MS. MOLINARE: Objection, speculation.

25 Q. (By Mr. Edwards) -- at the state prison

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1 facilities in which they're not -- there is not
2 air-conditioning or climate control for the housing for
3 the prisoners?

4 A. And when you say "policies," you're talking
5 about health care policies or --

6 Q. Well --

7 A. -- TDC policies?

8 Q. Okay. Well, let's start with health care
9 policies.

10 A. I don't be -- There is not a health care
11 policy as it relates to -- that I'm aware of -- that
12 relates to the conditions in the actual living
13 facilities. We have a health care policy that relates
14 to the work restrictions in regard to heat.

15 Q. And when you say health care policy, you're
16 talking about the CM -- the correctional managed care
17 policy?

18 A. That is correct.

19 Q. So there is a correctional managed care policy
20 that deals with work and the heat; correct?

21 A. Correct.

22 Q. But there is no such correctional managed care
23 policy or UTMB policy for that matter that deals with
24 extreme heat inside -- inside the prison?

25 A. Not that I am aware of, right.

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1 said: It "wasn't discussed as being necessary."

2 And my question was: "Why not?"

3 A. Because it wasn't necessary.

4 Q. How many people died in the summer of 2011?

5 A. Ten.

6 Q. Are you sure that it wasn't necessary to bring
7 those temperatures down, sir?

8 MS. MOLINARE: Objection --

9 MR. STONE: Objection, argumentative.

10 MS. MOLINARE: And objection,
11 speculation.

12 A. Your question again?

13 Q. (By Mr. Edwards) Yeah. Are you sure that
14 it's -- it wasn't necessary to bring those temperatures
15 down inside?

16 MS. MOLINARE: Objection, argumentative;
17 objection, speculation.

18 A. Again, I don't know the details of the ten
19 cases; and so what -- what could have altered the
20 outcome in any of those cases, I'm not aware.

21 Q. (By Mr. Edwards) The number one preventative
22 factor in cases of preventing heatstroke is access to
23 air-conditioning; correct?

24 A. Correct. Well, no. Actually I don't know
25 that. I should not say that. I don't know that.

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1 etcetera, unless we're going to get into bariatric
2 surgery and other things, I mean, it really becomes a
3 patient-dependent process.

4 Q. Certainly you would agree that obesity can
5 limit one's physical activity?

6 A. I would agree with that.

7 Q. Certainly you would agree that morbid obesity
8 can affect people's ability to breathe?

9 MS. MOLINARE: Objection, speculation;
10 objection, foundation; objection, vague.

11 A. Again, not knowing the specific circumstances,
12 but morbid obesity can have -- can complicate the
13 respiratory process.

14 Q. (By Mr. Edwards) It can affect the ability to
15 walk or run; right?

16 A. Again, not knowing the specifics, yes.

17 Q. It can affect the ability to climb; correct?

18 A. Stairs, like -- Or not like -- You're
19 talking stairs, not mountains or climb any --

20 Q. Let's start with stairs.

21 A. Yes, it can. It can affect someone's ability
22 to -- to climb.

23 Q. It can affect someone's ability to climb into
24 a top bunk; correct?

25 A. Again, not knowing the circumstances

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specifically, that could possibly occur.

Q. Okay. And morbidly obese people are at a higher risk to develop heat illness if they're exposed to higher temperatures; correct?

MS. MOLINARE: Objection, vague; objection, foundation; objection, speculation.

A. Again, not knowing the specifics, morbid obesity can be a risk factor for heat-related illness.

Q. (By Mr. Edwards) And that risk factor is something that UTMB should take into account when making housing recommendations to TDCJ; correct?

MS. MOLINARE: Objection, speculation.

A. In making housing recommendations to TDCJ?

Q. (By Mr. Edwards) Uh-huh.

A. It would be -- A patient's morbid obesity would be part of our medical assessment, and part of and play into a decision to -- about potentially that patient requiring special housing.

Q. Do you practice medicine currently and treat patients?

A. No. Not -- Not on a day-to-day basis.

Q. Have you ever treated anyone for heat -- for heatstroke?

A. Not -- Not to my recollection. It is -- It is possible that I could have in Illinois; but -- as I

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